

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
VALDOSTA DIVISION

UNITED STATES OF AMERICA, :
: :
: :
v. : : CASE NO.: 7:18-CR-21(WLS)
: :
SAMUEL HOWARD and TOKESHA :
BAILEY, :
: :
Defendants. :

ORDER

Before the Court is Defendant Samuel Howard's Motion to Suppress (Doc. 56). For the following reasons, Howard's Motion to Suppress is **DENIED**.

PROCEDURAL BACKGROUND

On May 8, 2018, Howard was indicted on two counts for possession with intent to distribute methamphetamine. (Doc. 1.) On December 21, 2018, Howard moved to suppress all evidence obtained after law enforcement traffic stops on October 11, 2016 and April 26, 2018, allegedly in violation of the Fourth Amendment. (Doc. 56.) The Government responded to Howard's motion. (Doc. 65.) On March 13, 2019, the Court held a hearing on the Motion. (See Doc. 82.) As no supplemental briefs were filed within the time ordered by the Court (Doc. 74), Howard filed motion for extension of post-hearing brief filing deadline. (Doc. 84.) After the Court granted Howard's motion, he filed a supplemental brief. (Doc. 86.) The Government did not provide a supplemental response, but advised at the pretrial hearing that it stands on the arguments made in its prior brief. Accordingly, the motion is ripe for review.

FACTUAL FINDINGS

At the March 13, 2019 hearing on Howard's Motion to Suppress, the Government presented two witnesses and its two exhibits were admitted without objection. (See Doc. 86.) Howard presented no witnesses and its two exhibits were admitted without objection. *Id.* Upon reviewing the exhibits, witnesses' testimony, and Parties' arguments, the Court makes the following findings of fact.

October 11, 2016 Arrest

On October 11, 2016 Keith Newman, of the Thomas County Sheriff's Office, received information from a confidential informant (CI) that a younger black male with dreadlocks and known as Cruze would be driving a dark blue Buick vehicle from Moultrie and delivering methamphetamine to someone in the area of 2050 Church Street in Meigs, Georgia. Newman and other agents then set up surveillance in less than an hour based on the information provided by the CI. Hidden behind trees and bushes, Newman saw the dark blue vehicle drive slowly pass 2050 Church Street, turn left onto East Johnson Street, and then right on East Railroad Street. Newman observed the driver, matching the description given by the CI, looking in the direction of 2050 Church Street. The dark blue vehicle then parked in the middle of East Railroad Street. Agents then activated the blue lights on their vehicle, stopped in front of the dark blue Buick, and approached the driver and passenger, who he identified as Howard and Tokesha Bailey, respectively. Newman smelled the odor of burnt marijuana coming from the vehicle. He then instructed Howard and Bailey to exit the vehicle. Both parties were detained. Agents then searched the vehicle, finding 85 grams of methamphetamine, three ounces of ICE, a cellphone, a zip pouch containing empty baggies, a digital scale, and about \$1,800 in cash. Howard and Bailey were arrested on charges of trafficking methamphetamine. Newman later read Howard his *Miranda* rights waiver, which Howard refused to sign. After Newman advised Howard he was being charged with trafficking methamphetamine, Howard asked how he could be charged without Newman speaking with Bailey because she might say the drugs were hers.

April 26, 2018 Arrest

On April 26, 2018, Stripling Luke of the Georgia Bureau of Investigation (GBI) interviewed Kim Wesley, after he was arrested. Wesley advised that Jerome Cruze was his current source of supply for methamphetamine. Wesley agreed to cooperate with the government and advised he could contact Jerome Cruze. Wesley identified a photograph of Howard as Jerome Cruze. Wesley contacted Howard and requested eight ounces of methamphetamine. Howard agreed to meet Wesley at McDonald's in Nashville, Georgia. Luke and other agents set up surveillance at McDonald's. Wesley was also on scene in a vehicle with an agent of the Drug Enforcement Administration task force. Wesley identified Howard and

his vehicle, a blue Buick Lucerne, when Howard's vehicle pulled into the McDonald's parking lot. Howard entered McDonald's. As Howard exited McDonald's, Luke, wearing a ballistic vest marked "Police," approached Howard and commanded him to show his hands. After Howard failed to comply, Luke placed him in handcuffs. Howard denied having a vehicle in the parking lot, but Luke found Howard's keys in his hands. Agents found approximately eight ounces of methamphetamine in the front passenger seat of the vehicle. Agents provided Howard with a GBI Waiver of Right Form, but Howard stated did not wish to speak with the agent.

DISCUSSION

A. Reasonable Suspicion of Criminal Activity

Law enforcement officers must have reasonable, articulable suspicion of criminal activity to conduct an investigatory stop. *Terry v. Ohio*, 392 U.S. 1 (1968). Law enforcement officers have reasonable suspicion of criminal activity when a reliable tip from a confidential informant is received. *Alabama v. White*, 496 U.S. 325, 330 (1990); *United States v. Woods*, 365 F. App'x 914 (11th Cir. 2010)(per curium). A "totality of the circumstances" approach is used to assess a tip's reliability. *Illinois v. Gates*, 462 U.S. 213, 230-33 (1983); *United States v. Gonzales*, 969 F.2d 999, 1002-03 (11th Cir. 1992). Under the totality of the circumstances approach, the following factors are considered: (1) whether the tip places the informant at risk for negative repercussions if untrue, because it was provided directly rather than anonymously; (2) whether the tip provides specific information typically known only by someone with personal knowledge, (3) whether the information is capable of objective verification, (4) whether the tip details future actions of third parties ordinarily not easily predicted that later occur, (5) whether the informant has personal knowledge, (6) whether there is a past history between the informant and the police department that supports reliability, and (7) whether the information was corroborated by subsequent investigation. *Richardson v. Quitman County, Ga.*, 912 F. Supp. 2d 1354, 1370-71 (M.D. Georgia 2012). Further, officers have probable cause to make a warrantless arrest in a public place if there is probable cause that a felony occurred.

October 11, 2016 Stop

Here, law enforcement officers had reasonable, articulable suspicion of criminal activity to conduct an investigatory stop. Under the totality of circumstances, the tip is reliable, even

though the identity of the CI was not revealed to defendant. *See Roviaro v. United States*, 353 U.S. 53 (1957) (holding that disclosure of an informant is not required if the informant is not an active participant, but rather a mere tipster). The CI, in police custody at the time the information was provided, advised officers about a specific person, vehicle, location, and time where drug activity would occur. Officers conducted surveillance and corroborated the information provided by the CI and observed additional conduct. Because the CI provided sufficient details predicting future drug activity, which were confirmed by law enforcement officers and followed by additional observation, the Court finds that the information was reliable under the totality of circumstances to provide officers with reasonable, articulable suspicion of criminal activity to conduct a stop of Howard's vehicle.

April 26, 2018 Stop

Likewise, law enforcement officers had reasonable, articulable suspicion of criminal activity to conduct an investigatory stop of Howard. Law enforcement officers were present during telephone conversations and text message communications between Wesley and Howard arranging the delivery of eight ounces of methamphetamine. Wesley identified Howard by photograph and at the McDonald's parking lot, the arranged location for the sale of eight ounces of methamphetamine. Wesley identified Howard's vehicle in the McDonald's parking lot. Howard denied having a vehicle in the parking lot, although law enforcement observed him driving a blue Buick Lucerne into the McDonald's parking lot. Because Wesley aided law enforcement officers with coordinating the controlled delivery of eight ounces of methamphetamine by Howard, the Court finds that under the totality of circumstances officers had reasonable, articulable suspicion of criminal activity to conduct an investigatory stop. Further, as discussed in greater detail, officers had probable cause to believe a felony occurred, justifying a warrantless arrest of Howard.

B. Authority to Search the Vehicle

Probable cause exists when police receive reliable information from a confidential informant regarding the suspect's involvement in drug activity, and the information is subsequently corroborated by independent police investigation. *United States v. Goddard*, 312 F.3d 1360, 1363–64 (11th Cir. 2002). The smell of marijuana creates probable cause. *United States v. Tobin*, 923 F.3d 1506, 1512 (11th Cir. 1991). A police officer may conduct a warrantless

search of an automobile if ““(1) there is probable cause to believe the vehicle contains contraband or other evidence which is subject to seizure under the law, and (2) exigent circumstances necessitate a search or seizure.”” *United States v. Campbell*, 920 F.2d 793, 795 (11th Cir.1991) (citation omitted); *United States v. Banshee*, 91 F.3d 99, 102 (11th Cir.1996), *cert. denied*, 519 U.S. 1083 (1997).

October 11, 2016 Stop

Here, the information obtained from the CI along with independent corroboration and conduct directly observed by the officer created probable cause to search Howard’s vehicle. The CI provided a description of Howard, his vehicle, his expected location, and that he would be delivering methamphetamine, which officers later found during their search. *See United States v. Talley*, 108 F.3d 277, 281 (11th Cir. 1997)(finding that the informant’s description of the car driven by the defendant, its location, and allegation that defendant possessed cocaine were corroborated by police and gave rise to probable cause to believe the vehicle driven by the defendant contained contraband and validated the search of the vehicle). Because the information provided by the CI was corroborated by law enforcement officers and included additional observations by the officers, including smelling the odor of marijuana emitting from the vehicle, officers had probable cause to stop then search Howard’s vehicle. The Court finds that officers had the authority to search the vehicle.

April 26, 2018 Stop

Here, law enforcement officers had probable cause to search Howard’s vehicle based on recorded and unrecorded telephone conversations and text messages between Wesley and Howard and Wesley’s identification of Howard and his vehicle when Howard arrived at McDonald’s. Law enforcement coordinated the controlled delivery of eight ounces of methamphetamine through the use of Wesley. Wesley was in law enforcement custody in view of the McDonald’s parking lot. He identified Howard and his vehicle. Howard negated his ownership of the vehicle after officers had directly observed him driving and parking the blue Buick Lucerne. Because Wesley aided law enforcement officers with coordinating the controlled delivery of eight ounces of methamphetamine by Howard, the Court finds, upon the totality of the circumstances, that officers had the authority to search Howard and the vehicle.

C. Statements Made After Custodial Arrest

As the Court finds there was probable cause for a search of Howard and his vehicle on both occasions, any statements made after custodial arrest can be admissible under appropriate circumstances. Howard did not agree to waive his *Miranda* Rights. However, the Court finds that statements made by Howard after each arrest were not obtained in violation of his constitutional rights. *See Cannady v. Dugger*, 931 F.2d 752, 754 (11th Cir. 1991) (holding that a statement spontaneously and voluntarily made and not the result of any attempted interrogation is admissible). The protections of *Miranda* do not extend to voluntary statements to law enforcement officers. *Sullivan v. State of Ala.*, 666 F.2d 478 (11th Cir. 1982). Because the Court finds that statements made by Howard were spontaneously and voluntarily made, the statements are admissible.

CONCLUSION

For the foregoing reasons, Howard's Motion to Suppress (Doc. 56) is **DENIED**.

SO ORDERED, this 31st day of July, 2019.

/s/ W. Louis Sands
W. LOUIS SANDS, SR. JUDGE
UNITED STATES DISTRICT COURT